

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CITY OF OAKLAND,) Case No. 18-cv-07444-JCS
)
Plaintiff,) San Francisco, California
) Courtroom G, 15th Floor
v.) Friday, July 19, 2019
)
OAKLAND RAIDERS, et al.,)
)
Defendants.)

TRANSCRIPT OF FURTHER CASE MANAGEMENT CONFERENCE
AND MOTION HEARING
BEFORE THE HONORABLE JOSEPH C. SPERO
UNITED STATES CHIEF MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: BRUCE L. SIMON, ESQ.
Pearson, Simon & Warshaw, LLP
44 Montgomery Street, Suite 2450
San Francisco, California 94104
(415) 433-9000

MICHAEL H. PEARSON, ESQ.
CLIFFORD H. PEARSON, ESQ.
Pearson, Simon & Warshaw LLP
15165 Ventura Boulevard, Suite 400
Sherman Oaks, California 91403
(818) 788-8104

BARBARA J. PARKER, ESQ.
MARIA BEE, ESQ.
Oakland City Attorney's Office
One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612-1999
(510) 238-3815

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1 APPEARANCES: (Cont'd.)

2 For Plaintiff:

JAMES W. QUINN, ESQ.
MICHAEL M. FAY, ESQ.
Berg & Androphy
120 West 45th Street, 38th Floor
New York, New York 10036
(646) 766-0073

5 For Defendant
6 Oakland Raiders:

DANIEL B. ASIMOW, ESQ.
Arnold & Porter Kaye Scholer, LLP
Three Embarcadero Center, 10th Floor
San Francisco, California 94111-4024
(415) 471-3100

8 For Defendants Arizona
9 Cardinals Football Club LLC,
Atlanta Falcons Football
10 Club, LLC, Baltimore Ravens
Limited Partnership, Buffalo
11 Bills, LLC, Panthers
Football, LLC, Chicago Bears
12 Football Club, Inc.,
Cincinnati Bengals, Inc.,
13 Cleveland Browns Football
Company LLC, Dallas Cowboys
14 Football Club, Ltd., PDB
Sports, Ltd., Detroit Lions,
15 Inc., Green Bay Packers, Inc.,
Houston NFL Holdings, LP,
16 Indianapolis Colts, Inc.,
Jacksonville Jaguars, LLC,
17 Kansas City Chiefs Football
Club, Inc., Chargers
18 Football Company, LLC, Rams
Football Company, LLC,
19 Miami Dolphins, Ltd.,
Minnesota Vikings Football,
20 LLC, New York Football
Giants, Inc., New York Jets
21 LLC, Philadelphia Eagles,
LLC, Pittsburgh Steelers
22 LLC, Forty Niners Football
Company LLC, Football
23 Northwest LLC, Buccaneers
Team LLC, Tennessee
24 Football, Inc., Pro-
Football, Inc., National
25 Football League,

JOHN E. HALL, ESQ.
Covington & Burling LLP
One City Center
850 Tenth Street, NW
Washington, DC 20001-4956
(202) 662-5104

BENJAMIN J. RAZI, ESQ.
Covington & Burling, LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 662-5463

1 APPEARANCES: (Cont'd.)

2 For Defendants New England
3 Patriots, LLC, New Orleans
4 Louisiana Saints, LLC:

JOHN E. HALL, ESQ.
(See Above for Address)

BENJAMIN J. RAZI, ESQ.
(See Above for Address)

5 For Interested Party
6 United States of America:

JEFFREY D. NEGRETTE, ESQ.
Department of Justice
Antitrust
950 Pennsylvania Avenue, NW
Office 3224
Washington, DC 20530
(202) 598-2384

9 Transcription Service:

Peggy Schuerger
Ad Hoc Reporting
2220 Otay Lakes Road, Suite 502-85
Chula Vista, California 91915
(619) 236-9325

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1 THE COURT: Welcome.

2 MR. RAZI: Good morning, Your Honor.

3 MR. NEGRETTE: Good morning, Your Honor. Jeff Negrette
4 for the United States.

5 THE COURT: Oh, welcome. The United States is here.
6 Great. You didn't travel from Washington for this, did you?

7 MR. NEGRETTE: I did.

8 THE COURT: Wow. That is dedication. Or maybe you just
9 wanted to get out of Washington, especially in July.

10 MR. NEGRETTE: Pretty hot there, Your Honor.

11 THE COURT: July is -- this week especially.

12 MR. NEGRETTE: It's been hot.

13 THE COURT: So let me tell you my preliminary thoughts
14 about the case. My bottom line is I think that I would give the
15 Plaintiffs an opportunity to amend to cure the defects that I see
16 in the current pleading.

17 I think that there's no good argument that this is anything
18 other than a Rule of Reason case based on the precedents both from
19 the Circuit in the *Raiders 1* case, I think, in the *American Needle*
20 case, that has lots of implications, but the first challenge that
21 I think on its face is legitimate is the question about antitrust
22 injury.

23 And what I'll do is I'll go through my thoughts on this and
24 give you a chance to talk me out of it. There's a lot of people
25 in the audience, but I do have a 10:30 criminal calendar, so we're

1 rather pressed.

2 The question is whether or not there was an antitrust injury
3 that resulted from unlawful conduct. And the ground is shifting
4 in the sort of two elements that appear to be most prevalent in
5 the opposition brief, at least, and, to a certain degree, in the
6 complaint, but mostly in the opposition brief, are the relocation
7 fee and the 32-team limitation.

8 As to the first, I don't actually see a plausible argument
9 that the relocation fee is anything that resulted in an antitrust
10 injury. The relocation fee is not something that encouraged the
11 Raiders to leave; if anything, the relocation fee from the
12 Raiders' point of view is certainly -- from any franchise that's
13 moving -- is discouraging of that rule. There's no show- --
14 certainly no allegation and no showing that but for the fee, the
15 Raiders would have not sought relocation. In fact, if they didn't
16 have to have approval, if they didn't have to have a relocation
17 fee, it would -- it would be easier to move.

18 It doesn't make sense to me that relocation fee, which makes
19 it more likely, on the other hand, at least how the allegation
20 goes, would be proved as anti-competitive. In an unrestrained
21 market, in the absence of all those things, people could just
22 move. The fact that they can move more freely because they pay
23 this fee I don't think changes that analysis.

24 So I would hold, if I sustain this tentative, that the
25 relocation fee doesn't result in an antitrust injury.

1 The 32-team limitation is more of the type of supply
2 restriction that we're used to dealing with in antitrust cases and
3 a supply restriction can have -- result in antitrust injuries. I
4 don't think that the allegations are currently sufficient, but
5 they might be able to be made sufficient with respect to those
6 limitations.

7 The -- and what I'm not willing to do is take on in this
8 round of briefing the argument that was largely contained in the
9 reply brief, that the 32-team restriction is a lawful and
10 reasonable restriction because it's not fully briefed. And it may
11 actually end up being the heart of the case, and maybe we'll have
12 to deal with it in the next round, but I'm not going to do it the
13 way the briefing has unfolded in this room.

14 On this round, the allegations of Oakland appear to me to be
15 insufficient with respect to their being harmed by the 32-team
16 restriction. They've got nothing that's very useful in that
17 regard in the complaint. In the briefing, they have something
18 that was not in the complaint, some conclusory assertions that
19 without limitation, they would have gotten a team, essentially.
20 There would have been 33 teams or there would have been 35 teams
21 or whatever it says.

22 You know, I -- it's not in the complaint, so we're going to
23 have to go to the next step and grant leave to amend, but I
24 guarantee that on its face, if that's all you say in the
25 complaint, the case will be dismissed because that's not

1 sufficient. That is to say, the conclusory assertion that there
2 would have been 33 teams or that there would have been 35 teams is
3 not, without other factual development, sufficient in my mind to
4 show the kind of antitrust injury that you need to show, at least
5 have allegations about. You need detailed factual recitation of
6 the -- you know, that but for the 32-team restriction, you know,
7 whatever specific consequences there are -- there would have been
8 another -- there would have been -- we know that there are people
9 who are trying to make teams and they've said that they would have
10 put a team here or they would have put a team there. But just
11 sort of this in the air "we would have gotten a team" doesn't make
12 it for me when it comes to your allegation.

13 So the -- you know, that's sort of to me the beginning and
14 the end of the story in terms of that I need to dismiss the case
15 with leave to amend. But there are several embedded issues that
16 I wanted to give you some guidance on and potentially hear from
17 you today on as well, if you would like, that I'm going to cover
18 when we address this in writing that would be useful in deciding
19 how you're going to amend.

20 The first question arises are injuries as a landlord
21 cognizable under antitrust laws? And the answer is not the way
22 you've alleged it, but possibly. I don't think that the precedent
23 absolutely forecloses someone who sustains an injury due to anti-
24 competitive conduct from recovering just because they are a
25 landlord and is in their capacity as landlord that they are

1 injured. There's loose language about landlords, but I don't --
2 but the actual holdings of the case are not quite so broad. If
3 the injuries are in the market at issue -- so, for example, if
4 it's the rental market, then there's an argument that part of this
5 has to do with the rental market, then it's potentially possible.

6 I mean, if you had a situation where everyone in any
7 particular industry all of the suppliers got together -- the
8 suppliers being people who rented from some series of landlords
9 and decide, We're not going to rent to any landlord who doesn't
10 pay these super-competitive prices and we all agree to that. So
11 when, you know, John Doe who has a building won't reduce our rent
12 or whatever it is, then that could be something. It's not -- I
13 think the allegations of the complaint even on ownership are,
14 shall we say, a little imprecise and most of this needs to be
15 cleaned up and it needs to be an injury that is in the market that
16 is at issue.

17 Second, investment loss. So municipal investment loss of the
18 kind that was discussed in the *Rohnert Park* case where, you know,
19 you raise money through normal taxation or assessments or whatever
20 it is and then you spend it on infrastructure and that's an
21 investment, that's not recoverable.

22 But the investment loss that is at issue in this case, I have
23 no idea what it is because -- I mean, maybe I do in my head
24 because I read the papers, but I don't know what it is from the
25 complaint because it doesn't say. So you'd need to spell out what

1 it is to make sure -- to explain to the Court why it doesn't fall
2 under the teaching of *Rohnert Park* and other cases that these sort
3 of pure municipal investments are not cognizable in antitrust
4 cases.

5 Taxes. Taxes, whether it's Judge Breyer or Judge Ginsburg
6 dissenting, are not entirely clear to me what the result is. I
7 think it's clear that the normal sort of taxes that we think of as
8 benefits that result from getting a big enterprise into a
9 municipality are not recoverable. They're not cognizable as an
10 antitrust injury.

11 I suppose I could think of situations where it's not like
12 that, where it is much more tied directly to the commercial
13 activity and based on direct commercial contracts with the big
14 entity that's moving in and providing all this revenue. So the
15 fact that it actually comes in the form of taxes may just be a
16 part of the question in deciding whether it's commercial activity
17 for which you can recover under the antitrust laws.

18 Right now, there's no -- the allegation says taxes from sort
19 of generalized taxes. That wouldn't be sufficient. If you want
20 to get that as your antitrust injury, you need to do better than
21 that.

22 There's also vague conclusory language about other income
23 that Oakland derives. You know, if you want that to be included
24 in the thought process about having an antitrust injury, you have
25 to spell that out.

1 The next -- and I think really the pointed question in the
2 case -- is relevant market. I am not sure what the relevant
3 market is. I think one of the great teachings of the Raider
4 series of cases is we don't have to define it with precision.
5 It's -- I don't know quite how that works, but that's certainly
6 what the Ninth Circuit said.

7 But I'm pretty sure that it's not the vaguely-defined market
8 that the Plaintiffs -- you know, just a bunch of -- anybody who
9 really wants a stadium or anybody who really wants an NFL team.
10 I don't know what that is, and that's not a product. So that
11 you're going to have to take another stab at the -- at what the
12 market is that is more precisely defined and is defined by a
13 product and that we can test by the usual mechanisms for defining
14 market so you'll know is it -- and I'm not sure what it is. I
15 don't know whether it's the market for suppliers of stadiums. I
16 don't know if it's the market for -- you know, for the patronage
17 of NFL teams. That seems a little loosey-goosey to me, but I
18 haven't really thought it through because I just was focusing on
19 the way to define it.

20 The only part of the case that I'm inclined to dismiss with
21 prejudice is the breach of contract action. I think it's very
22 clear that Oakland is not a third party beneficiary under the
23 recent California Supreme Court precedent. There's nothing in the
24 so-called contract, in the guidelines that were promulgated by the
25 Commissioner, which indicate that it was done to benefit the host

1 location. To the contrary, the exact language quoted by Oakland
2 shows that it was designed to benefit "the League" in the host
3 location. So I think it's clear that it's not motivated -- which
4 is one of the tests -- to benefit a host location.

5 I also think that enforcement of this contract by Oakland
6 does not further the objective of the contract. The objective of
7 the contract is to promote, as it says over and over again, the
8 business interests of the clubs and the League. I'm not -- I'm
9 pretty clear that the adding enforcement by a potential host
10 against the clubs and the League is not what these people
11 envisioned in deciding that.

12 So I also think that, frankly, there's no -- there are
13 insufficient allegations of breach. If you read -- I find it
14 somewhat bizarre that the NFL is taking the position that the
15 guidelines that were promulgated to protect the NFL and its clubs
16 from antitrust cases are not binding on the clubs and the NFL. I
17 hope you won't be seeing that in the next suit by a team that's
18 trying to move and you're trying to keep from moving, but I do
19 agree, actually, that while it may have certain implications, it
20 is, with respect to the relevant things for which a breach is
21 sought, a guideline. They are factors that "may" be considered by
22 the members. That's the word that's used. They do not appear to
23 be mandatory. And it's -- it -- so it's questionable as to
24 whether or not there can be one. The argument on the other side
25 is, I suppose if you didn't consider any of those factors, that

1 would be a potential allegation, but I don't -- even so, it says
2 they may consider it. It's not the sort of thing that they have
3 to consider.

4 So that's my tentative. Let's see which way the wind blows.
5 So why don't I hear from the Plaintiffs.

6 MR. QUINN: Your Honor, Jim Quinn again and I'm going to
7 address the antitrust issues.

8 THE COURT: Yes, please.

9 MR. QUINN: And my colleague, Mr. Simon, will talk with
10 regard to the contractual issues.

11 THE COURT: Okay.

12 MR. QUINN: Okay. So I'm taking them in order. Let me
13 flip one of them. We are not -- and I think Your Honor also
14 articulated this -- we are not attacking the 32-team limitation
15 per se. It may or may not be legal, but --

16 THE COURT: That's flatly contradicted by your reply
17 brief, flatly, flatly contradicted. When asked the question, you
18 know -- get the reply brief out and I'll point it out to you
19 because it's in the introduction and it struck me and I paid close
20 attention to it because I had thought there might be some other
21 theory than the one that I was thinking about. And I was
22 wondering what it is. And so I looked in the reply brief and it
23 says, "There's no antitrust injury" -- this is the argument of the
24 Defense -- "because competition is increased rather than
25 decreased."

1 Okay. The answer to that, to quote the reply brief, "But, in
2 reality, competition was artificially constrained by the 32-team
3 cap."

4 I don't -- what is left if you don't have the 32-team cap?

5 MR. QUINN: Perhaps the -- we were inartful in how we
6 were expressing it, Your Honor. But --

7 THE COURT: Okay.

8 MR. QUINN: -- what our argument is, is that it's not
9 the cap itself that is illegal. It's the manner in which the
10 League and the teams -- because *Raiders* case -- in the context of
11 Section 4.3, the relocation rules that are in the constitution,
12 the *Raiders* cases hold for the proposition that the manner in
13 which the NFL and the NFL teams operate with regard to 4.3, that
14 they are acting as a cartel. And as -- because, otherwise, Your
15 Honor, why do they have these rules at all? They have the 4.3
16 rules precisely in order to eliminate competition among
17 themselves. That's what the rules are all about -- so that one
18 team doesn't move into another team's territory. That's why 4.3
19 exists in the first place.

20 So what the *Raiders* cases hold is that when they're operating
21 with regard to relocation under 4.3, putting aside the policies
22 themselves, they act as a cartel. And when they act as a cartel,
23 they have to -- and that's why this -- the *Raiders* 2, I guess, or
24 maybe it was *Raiders* 1 -- said that in order to withstand
25 antitrust scrutiny, they have to have reasonable policy.

1 And what we're saying is that --

2 THE COURT: Let me just --

3 MR. QUINN: I'm sorry, Your Honor. Go ahead.

4 THE COURT: Let me just take your arm on that. What the
5 *Raiders* case hold is when you want to restrict supply by refusing
6 to allow the team to move, you have to have reasonable policies.
7 It doesn't say when you do anything as a group with regards to
8 moving, you have to have reasonable policies. It says "when you
9 restrict supply," because that's the anti-competitive conduct in
10 the first set of *Raiders* cases. It was just -- there was the
11 supply restriction; right?

12 MR. QUINN: Well, they were -- in those cases, they were
13 attempting to prevent Oakland from moving to Los Angeles. That's
14 correct. But, Your Honor, I don't think it matters whether or not
15 you're talking about moving or staying. The whole idea when the
16 -- if you read the *Raiders* case, the whole idea when it says "in
17 order to withstand antitrust scrutiny," they were talking about
18 protecting the host city. That's what they were saying. If you
19 look at the list of things that they then list as possible rules
20 that they should -- they should promulgate, all of them were to
21 protect the city that might be using the team. That is -- the
22 whole concept --

23 THE COURT: See, I don't read that at all into those,
24 I don't read that at all into the policies. But we're not going
25 to talk about the policies.

1 MR. QUINN: Okay. Putting the policy aside, --

2 THE COURT: Yeah.

3 MR. QUINN: -- the -- under the *Raiders* case, they were
4 told that they had to have reasonable policies, okay, --

5 THE COURT: In order to restrict --

6 MR. QUINN: -- in order to --

7 THE COURT: -- someone from leaving.

8 MR. QUINN: Well, the language --

9 THE COURT: In order to restrict the people -- the team
10 from going from one city to another. What I'm struggling for is
11 what's the anti-competitive conduct?

12 MR. QUINN: The anti-competitive conduct, Your Honor, is
13 that -- remember, they're acting as a group, okay? They have to
14 -- they have to vote together as -- they're competitors and they
15 have to vote together to either allow or disallow a movement.

16 And when they go to a city like Oakland or St. Louis or San
17 Diego and they say, Listen, unless you give us what we want,
18 unless you give us what we say are super-competitive profits by
19 saying you've got to put \$700 million up for this or that, which
20 they did in Oakland, they did in St. Louis, they did in San Diego
21 -- that unless you do that, we as a group are going to let this
22 team move.

23 THE COURT: I see. So they came to you -- to Oakland
24 and said as a group that that's what's going to happen?

25 MR. QUINN: Absolutely they did.

1 THE COURT: I thought it was Oakland that --

2 MR. QUINN: No, no.

3 THE COURT: -- said that they wanted to move.

4 MR. QUINN: No. Your Honor, and --

5 THE COURT: Didn't Oakland -- didn't the Raiders decide
6 they wanted to move?

7 MR. QUINN: The Raiders had decided they wanted to move.

8 THE COURT: And the Raiders applied to the NFL for
9 permission to move. Right?

10 MR. QUINN: Yes, Your Honor, but when the NFL -- in the
11 NFL, the League Office came to Oakland --

12 THE COURT: Yeah.

13 MR. QUINN: -- on behalf of the other teams, --

14 THE COURT: Yeah.

15 MR. QUINN: -- the League Office acts on behalf of the
16 other teams. It's not an entity unto itself. It's only acting on
17 behalf of all the owners.

18 THE COURT: Yeah.

19 MR. QUINN: They come to Oakland as a group --

20 THE COURT: Yeah.

21 MR. QUINN: -- and they say, Listen, unless you give us
22 what we want, we as a group are gonna vote to let Oakland leave.

23 THE COURT: And why is that anti-competitive?

24 MR. QUINN: It's anti-competitive, Your Honor, --

25 THE COURT: I mean, because Oakland is leaving for a

1 place that is willing to pay more money.

2 MR. QUINN: It's anti-competitive because what they then
3 have done is they've knocked us out of the market.

4 THE COURT: What do you mean knocked you out of the
5 market?

6 MR. QUINN: We don't have a team and --

7 THE COURT: Well, you don't have -- that doesn't mean
8 you're not in the market. That means you don't have a team. But
9 -- but why is that -- what I'm struggling with is you had two
10 cities bidding for this team. You had Oakland and you had Las
11 Vegas.

12 MR. QUINN: Right. Yes.

13 THE COURT: And they're both -- and Las Vegas bid more
14 money. For whatever reason, they were bidding more money. How is
15 it -- what's the anti-competitive conduct --

16 MR. QUINN: Actually, in fairness, they really -- the
17 bidding was almost -- was almost the same. The difference was
18 that the NFL owners, because they could put their thumb on the
19 scale and get \$375 million in relocation fees, they -- they put
20 their thumb on the scale and said, Okay, we'll get \$375 million in
21 relocation fees. Oakland, you can move.

22 THE COURT: So -- but that's not why the Raiders move.
23 It's -- that fee, as I've already said, is a disincentive to
24 moving. So I'm not sure what you're talking about with the fee.

25 MR. QUINN: Your Honor, with all due respect, I don't

1 believe the fee is really a disincentive to moving, and the reason
2 for that is Oakland Raiders are not going to pay that fee. The
3 fans in Las Vegas are going to pay that fee. That's been the --
4 that's --

5 THE COURT: But that's a ridiculous argument. That's
6 true of any product. You can always pass it on to someone else.
7 You always -- but it still fits into the economic analysis when
8 you're trying to go someplace as to what the costs are and whether
9 you can get someone else to pay it. So adding \$300 million
10 matters. It may be that it doesn't put them over the top, but it
11 certainly matters. And there's no way it's an incentive for
12 Oakland. If anything, it's a disincentive for Oakland.

13 But in any event, Oakland makes this choice. Oakland doesn't
14 choose, I'm going to go because I get to pay \$300 million to the
15 NFL. That's not why they went. They went because they thought it
16 was a better deal; right?

17 MR. QUINN: Presumably, that's why they went. That's
18 correct.

19 THE COURT: Well, why can't they make that choice?

20 MR. QUINN: Because, among other things, the *Raiders*
21 case said that, "When the League is acting under 4.3 as a cartel,
22 they can't do it in such a way as to simply squeeze extra through
23 the competitive process." That's a direct quote out of the
24 *Raiders* case.

25 THE COURT: No, it's not. It's a direct misleading

1 quote because it's in the context of restricting movement. It's
2 restricting. They were never addressing sort of, Well, we're
3 going to let somebody go and we can't let them go. We can't let
4 them go under certain circumstances. We cannot permit the
5 movement. That wasn't addressed in the *Raiders* case at all. I
6 mean, that's --

7 MR. QUINN: I agree it was not addressed in the *Raiders*
8 case because the facts there were different. But the --

9 THE COURT: I guess I'm just trying to understand the
10 theory because I don't think the *Raiders* case helps us at all
11 because it's a completely different set of considerations.

12 MR. QUINN: Your Honor, I'm not sure -- I don't see why
13 it would make a difference as to whether or not we're talking
14 about allowing a team to move or preventing a team from moving.
15 The whole idea is it's being done in the context of a cartel which
16 is -- is acting in such a way to make sure that they are gonna get
17 excess profits one way or the other.

18 THE COURT: Well, let's think about that. So if a
19 cartel decides, I'm going to let my members charge whatever number
20 they want, whatever prices they want, that's not anti-competitive;
21 right?

22 MR. QUINN: Well, it -- if they all agree.

23 THE COURT: No, no. If they all agree that, We can all
24 charge whatever we want -- high, low, doesn't matter --

25 MR. QUINN: No. That in and of itself would not be --

1 THE COURT: Okay.

2 MR. QUINN: -- anti-competitive.

3 THE COURT: Why isn't this that? Why isn't this the
4 Raiders are being allowed to move?

5 MR. QUINN: It isn't because they've had a pattern in
6 the last several years where they have gone to individual cities
7 and said, Unless you give us X, Y, and Z, we are going to
8 collectively allow a team to move.

9 THE COURT: Well, but that's my point, is that they're
10 collectively allowing a team to move to a city that's willing to
11 put up -- you know, don't get me wrong. I have my own personal
12 feelings about whether this is good for the game or good for
13 municipalities or good for the country. Those are beside the
14 point at the moment.

15 But why can't a team decide to go to the highest bidder? Why
16 can't the NFL agree to allow them to go to the highest bidder?

17 MR. QUINN: Well, first of all, I think part of it's a
18 question of fact. They weren't necessarily the highest bidder.

19 THE COURT: So -- well, that's not in the complaint. If
20 your allegation is that it didn't go to the highest bidder and
21 that's relevant to this calculation, then it ought to be in here,
22 but that's -- that's not in this complaint.

23 MR. QUINN: Well --

24 THE COURT: And I also think there would be a question
25 of plausibility if you care to go down that route, but go ahead.

1 But so why can't they go to the highest bidder?

2 MR. QUINN: Because --

3 THE COURT: Why isn't that what competition is all
4 about?

5 MR. QUINN: Well, because when they're acting as a
6 cartel, Your Honor, the -- we can at least agree that the *Raiders*
7 cases found that when the NFL is voting in connection with 4.3,
8 that they're acting as a cartel. The cases said it several
9 different times.

10 THE COURT: So why -- I --

11 MR. QUINN: So I don't see the --

12 THE COURT: Let me put it differently.

13 MR. QUINN: Okay.

14 THE COURT: How is it relevant for antitrust purposes?
15 How is there a competitive difference? What is the difference
16 between the NFL saying, Go wherever you like -- as a group saying,
17 Go to wherever you like. Go to the highest bidder, go to the
18 lowest bidder, do whatever you want and not acting at all, having
19 just no restriction, free market? What's the -- what's the
20 relevant difference between those for competition?

21 MR. QUINN: Well, if in fact -- if in fact that was the
22 case, that there was no 4.3, --

23 THE COURT: Yeah.

24 MR. QUINN: -- then I agree, then there wouldn't be a
25 competitive problem, but there is a 4.3.

1 THE COURT: Okay.

2 MR. QUINN: They do have a limitation in the number.
3 There's only so many teams.

4 THE COURT: Well, but that's my point. But that's
5 exactly my point -- that in the absence of a supply limitation,
6 this argument doesn't work because there's no difference, in the
7 absence of a supply limitation, between the NFL saying, Do
8 whatever you like, teams. There's nothing in our constitution
9 that forbids you from moving. Do whatever you like, and the NFL
10 saying, There's something in our constitution that says you have
11 to get our approval, but we approve it. Do whatever you like.

12 From a competition point of view, those seem to be the same
13 things, unless there is some significance to the supply
14 limitation.

15 MR. QUINN: Well, Your Honor, there is -- they used the
16 supply limitation in order to seek to extract super-competitive
17 profits. That's what our allegation is.

18 THE COURT: That's why I said that it all boils down to
19 you must have, in order to prove your case, as alleged -- maybe
20 you'll think of something else in the next 30 days -- but as
21 alleged, that the supply limitation is unlawful. The supply
22 limitation is unlawful, not just -- not the other conduct.

23 MR. QUINN: Absolutely. I'm going to give Mr. Simon a
24 shot.

25 THE COURT: Your junior colleague is going to --

1 MR. QUINN: Oh, he's my senior colleague -- in this way.

2 MR. SIMON: So, Your Honor, I want to take a shot at
3 answering your question outside of the theory of antitrust law.
4 And that is the entirety --

5 THE COURT: Now you're really going to confuse me.

6 MR. SIMON: Okay. Well, --

7 THE COURT: But go ahead.

8 MR. SIMON: I thought we were more practical than that,
9 but --

10 THE COURT: I'm very practical.

11 MR. SIMON: So the bottom line is, is that the
12 relocation policy, which I would like to try to make an argument
13 to you by their own words are contractual in nature and use
14 contractual language but, putting that aside, they are intended to
15 illuminate the antitrust violation that occurred by the vote and
16 the NFL, the Commissioner, could have put language in there which
17 limited it to allowing teams to move versus preventing teams from
18 moving. There's nothing in there to that effect whatsoever.

19 And the bottom line of why the relocation rules are in place
20 and what the NFL itself has said, and would concede if they come
21 up here, is that they were trying to prevent franchise free
22 agency. So they made a determination that what you said the open
23 market should be, that a team should go to the highest bidder,
24 they themselves -- it was their policy that they didn't want that
25 to happen.

1 The relocation policy says the primary purpose of it is to
2 keep stable team/community relations, to keep the team where it's
3 supposed to be.

4 THE COURT: So from a competition point of view -- from
5 a competition point of view, that means they put restrictions on
6 the ability of teams to move.

7 MR. SIMON: Which they ignored. Which is just --

8 THE COURT: But so what? So what? They ignored them,
9 meaning there are no restrictions. They can go to the highest
10 bidder if they want. They're not living up to their -- in this
11 hypothetical world you posited -- not living up to their desire to
12 get rid of team free agency. They're just letting it happen.
13 What does that have to do with an antitrust violation?

14 MR. SIMON: It goes to the market and their argument
15 against the market. They're trying to argue that the market could
16 be -- competition for whatever price, you know, a team will take
17 and move all over the place. The entire history of the NFL is to
18 keep teams in their locations to have a stable market, to have 32
19 teams or 28 teams or whatever the number is at that time, and not
20 to have teams moving every year.

21 THE COURT: Okay.

22 MR. SIMON: That's how they define the market. If they
23 define the market that way, then, contrary to how they define the
24 market and how we define the market, that you can have somebody
25 bid twice as much, you know. It's not LeBron James. It's not,

1 you know, free agency in basketball. These are talking about
2 teams and communities.

3 THE COURT: This doesn't make any sense to me. First of
4 all, it's not antitrust theory. You haven't made any argument for
5 the jury that they're contradicting themselves or that when they
6 say they don't want historically to do this, they've let it get
7 away and now they're doing it. Or maybe they were misleading the
8 public in the first place. I don't know what the answer is.

9 But the question is: What they do right now, does that
10 unreasonably restrict a product in the market?

11 MR. SIMON: Yes, 'cause it's a closed system by virtue
12 of the way they conduct themselves. It's a closed system.

13 THE COURT: I see. So because there's only 32 teams,
14 it's a closed system.

15 MR. SIMON: Amongst other things. There's any number of
16 things that make it a closed system.

17 THE COURT: In the absence of the 32- --

18 MR. SIMON: The ability of them to vote, the
19 Commissioner's powers, it makes it a closed system. We're not
20 operating in a market where you have five companies that want to
21 sell widgets and they can sell them at whatever price they want.

22 THE COURT: But not every one of those is material as a
23 an antitrust violation. What you're saying is that there's only
24 32 teams. They control the supply, and so they can leverage that
25 into super-competitive prices other places.

1 MR. SIMON: Which is -- yes. Which is an antitrust
2 violation like in Microsoft where you take -- you're leveraging
3 one product and leveraging it into another product.

4 THE COURT: Well, which gets me back to the point that
5 I made at first and Mr. Quinn disputed, but I'm going back to it
6 again -- you've got to show that the 32-team restriction is an
7 unreasonable restraint of trade.

8 MR. SIMON: It's not just the 32-team restriction, Your
9 Honor. We'll make other allegations, when you allow us to amend,
10 that will show that there are other restrictions which they
11 themselves have endorsed that make it a closed system which make
12 this particular allowing the move to the highest bidder not only
13 not consistent with their policies but anti-competitive.

14 THE COURT: Okay.

15 MR. SIMON: And it's happening --

16 THE COURT: I'll look forward to that.

17 MR. SIMON: It's happening in three -- it happened three
18 times in recent memory. We're talking about Oakland, we're
19 talking about St. Louis, and we're talking about San Diego. So it
20 is becoming a "franchise free agency" environment.

21 I --

22 THE COURT: And it's a bad thing or is that a good
23 thing?

24 MR. SIMON: It's a bad thing.

25 THE COURT: From an antitrust point of view, forget

1 about what the NFL thinks because, you know, we can -- we can
2 agree to disagree -- and I don't know which side I'd come out on
3 -- on whether or not the NFL's desire to keep a closed system is
4 a good thing or a bad thing or whether free agency is a good thing
5 or a bad thing. But is it from an antitrust point of view a good
6 thing? And is it pro-competitive or is it anti-competitive?

7 MR. SIMON: Your Honor, given the fact that we are
8 involving public entities who are taking public funds and
9 investing it in these teams -- we're not talking about General
10 Motors happening to lose, you know, a product line. We're talking
11 about Oakland which put their heart and soul and money into this
12 team and it's just going to be no commitment whatsoever that the
13 team stays there if they follow their relocation policies. Then
14 those relocation policies mean nothing --

15 THE COURT: Yes.

16 MR. SIMON: -- and that means that they haven't cured
17 what they tried to cure that was the antitrust violation in the
18 first place.

19 THE COURT: That's just -- that's not an argument about
20 why it's anti-competitive. It's not an argument about why it's
21 anti-competitive. Why is it anti-competitive to let teams do what
22 they want?

23 MR. SIMON: It is anti-competitive because it's a closed
24 system and within the context of that system, they're using their
25 leverage and their position in that system to create a result that

1 is not competitive. And if it was truly competitive, it would be
2 competitive as to all host cities, all potential teams, and
3 otherwise, and it's never been the case. And we're not alleging,
4 You have to let a team in -- you know, bring a new team in.
5 That's not what we're alleging.

6 But if you're operating in a closed system and you define the
7 system and that's the market as we allege it in the complaint, you
8 have to look at it from the lens of what's anti-competitive in
9 that system, not just simply opening it up to everything, which is
10 totally inconsistent with all their pronouncements on what the
11 system is supposed to operate by.

12 THE COURT: Well, yeah. But that's not the test.

13 MR. SIMON: Well, --

14 THE COURT: The pronouncements on what they think it's
15 supposed to operate. The test for the Court ultimately, in lieu
16 of reasons, is whether or not the 32-team restriction is
17 reasonably necessary for the product. If it is or isn't, I don't
18 know. We'll figure that out. And you're going to have to show
19 that, in the absence of a 32-team restriction, you would have
20 gotten a team or you would have had the Raiders. You'll have to
21 show that because I don't know how that works. There's no
22 allegations in the complaint of that and just saying it doesn't
23 make it so. I don't know how you're going to show that you were
24 specifically harmed by the 32-team restriction; that is to say, in
25 its absence, but for the 32-team restriction, you wouldn't have

1 had these consequences. I don't know how you're going to do that,
2 but you'll allege whatever you allege and we'll see what it is.

3 MR. SIMON: I'd like to also ask you to allow us to
4 amend on the third party beneficiary claim. I think --

5 THE COURT: Why?

6 MR. SIMON: Because --

7 THE COURT: What are you going to say --

8 MR. SIMON: Well --

9 THE COURT: -- that you haven't already said?

10 MR. SIMON: We could say more about what their
11 motivating factors are, and I believe that we've already said
12 enough about the motivating factors, but I will -- I say that for
13 two reasons.

14 Number one, I --

15 THE COURT: Don't you think that I'm going to have to
16 make a decision as a matter of law?

17 MR. SIMON: No.

18 THE COURT: Yeah. Okay.

19 MR. SIMON: Let me just cite you to the *Bozzio* case v.
20 *EMI Group*. This is -- the citation is 811 F.3d 1144. It predates
21 *Goodwardene* but, nonetheless, --

22 THE COURT: Which, by the way, made it clear you can do
23 it on demurrer.

24 MR. SIMON: It did, in a very different situation.

25 THE COURT: No.

1 MR. SIMON: Payroll company -- it's a totally
2 distinguishable situation. But let me --

3 THE COURT: This one, we have the contract in front of
4 us.

5 MR. SIMON: One thing, it doesn't -- well, it is a
6 contract, number one.

7 THE COURT: Well, I think there's an argument it's a
8 contract among the NFL teams.

9 MR. SIMON: Well, I want to just take a shot at that
10 after, but let me first just make the point. This case says --
11 and the California Supreme Court case does not change it -- that
12 endorses that "Third party beneficiaries are fact-bound inquiry,
13 ill-suited to resolution at the motion to dismiss stage. Whether
14 the third party is an intended beneficiary or merely an incidental
15 beneficiary involves construction of the intention of the parties,
16 gathered from reading the contract as a whole in light of the
17 circumstances under which it was entered."

18 And that's exactly what the California Supreme Court says.
19 They were interpreting not just the contract but the circumstances
20 under which the contract was entered into.

21 And if you look at Exhibit 2 to the complaint, which are the
22 policies, not only does it have -- it's replete with contract-like
23 language, including in the beginning, at the very beginning of it.
24 It says, "Article 4.3 confirms that each club's primary obligation
25 to the League and to all other member clubs is to advance the

1 interests of the League in its home territory." It says, "This
2 primary obligation includes, but is not limited to, maximizing fan
3 support and including attendance in its home territory. Article
4 4.3 also confirms that no club has an entitlement to relocate
5 simply because it perceives an opportunity for enhanced club
6 revenues in another location."

7 That's the primary obligation. That's contractual and that
8 -- those relocation policies arose out of the *Raiders* case which
9 involved Oakland and the Raiders. Oakland had an expectation and
10 relied upon these relocation policies as we allege in the
11 complaint.

12 THE COURT: But you're not and you don't allege that
13 there's a violation of those abstract words about responsibility
14 to the League and the League's interest and the number of clubs'
15 interest in that home territory. That's not what you allege.

16 MR. SIMON: We do allege.

17 THE COURT: You allege -- well, you can't because it's
18 too vague. It wouldn't be -- it's hard to imagine a breach of
19 contract --

20 MR. SIMON: Your Honor, --

21 THE COURT: -- except as fleshed out by the other stuff,
22 which is all -- you know, is you may consider this and you may
23 consider that and you may consider this.

24 MR. SIMON: It is not vague, in all due respect. And
25 the cases that are relied upon by the Defendants are all oral

1 contracts, implied-in-fact contracts, not third party beneficiary
2 contracts, with the exception of the California Supreme case which
3 I already told you is factually distinguishable and gets into a
4 factual issue in judging those -- the various settlements.

5 Look at the negotiations prior to reconsideration of a move.
6 It doesn't say preventing a move or allowing a move. It says,
7 "Because League policy favors stable team/community relations,
8 clubs are obligated to work diligently and in good faith to obtain
9 and maintain suitable stadium facilities in their home
10 territories --

11 THE COURT: Why?

12 MR. SIMON: -- and to operate in a manner that maximizes
13 fan support in their current home territory." Why?

14 THE COURT: Why?

15 MR. SIMON: So that you don't have --

16 THE COURT: They're doing it because they want the City
17 of Oakland to grow?

18 MR. SIMON: They're growing it because they do not want
19 to have franchise free agency.

20 THE COURT: And why don't they?

21 MR. SIMON: Because they do not want that -- they want
22 the system to be closed.

23 THE COURT: Be -- for whose benefit do they want the
24 system to be closed?

25 MR. SIMON: For the benefit of the host cities, for the

1 benefit of the teams --

2 THE COURT: Show me where in the contract a single word
3 that says "for the benefit of the host cities."

4 MR. SIMON: I will. I'll -- there's multiple places
5 that talk about the fact that -- it talks about the incumbent
6 community, which is another word for it.

7 THE COURT: No, no, no, no, no. Yes, of course there's
8 an incumbent community. They play in an incumbent community.
9 They operate in a host city. Where is the statement that says you
10 can't -- I want you to do this so that -- not for the benefit of
11 the League, not for the benefit of the -- not for the business
12 interests of the League, but for this third party interest?

13 MR. SIMON: I just read it -- "stable team/community
14 relations."

15 THE COURT: But why are they doing it? What's the
16 reason why they want that? Isn't the reason obvious from the face
17 of the document? The reason is because they think that benefits
18 the NFL and its interests.

19 MR. SIMON: And the host cities that have the teams.
20 It's clear from the document -- first of all, if I can just go
21 through --

22 THE COURT: You've got about 30 seconds left, so wrap it
23 up.

24 MR. SIMON: All right. I just wanted to have the
25 opportunity to amend and make this clear with you. And, you know,

1 we would request that.

2 THE COURT: Sure. You can have leave to amend.

3 MR. SIMON: But let me just read a couple of things.
4 First of all, I want to say that the Commissioner in his enormous
5 power that is defined under the cases, one of the enormous powers
6 he has, which has been said in the cases to be contractual in
7 nature, is the ability to interpret the constitution. 4.3 is part
8 of that. So you can't detach the relocation policy from the --
9 from the constitution, which is the contract.

10 THE COURT: As you noticed, I wasn't going of on that
11 basis.

12 MR. SIMON: Yeah. The host cities, the incumbent
13 community, as you call it, are defined as "interested parties
14 under the relocation policies and will have an opportunity to
15 provide oral and written comments regarding the proposed transfer,
16 specifically directed to the host cities."

17 Under the policies themselves, Number 4, which they are
18 supposed to consider, which there is no evidence they considered
19 any allegations -- we have multiple allegations that they
20 disregarded -- we say they disregarded them -- 4 is "The extent to
21 which the club directly or indirectly received public financial
22 support by means of any publicly-financed playing facility,
23 special tracks treatment, or any other form of public financial
24 support and the views of the stadium authority, if public, in the
25 current community."

1 The relocation policies anticipate and specifically call out
2 where there's public financing and they recognize the existence of
3 public financing and the fact that a host community relies on the
4 relocation policies and the fact that there should be stable
5 team/community relations is a factor in the host community putting
6 money into the franchise, which increases the price of the
7 franchise, which provides a value to the NFL, which makes the
8 brand better, all of which is to the NFL's benefit at the expense
9 of the host city in this closed system.

10 That --

11 THE COURT: I don't disagree with any of that, but it
12 doesn't answer the question about the intended beneficiary.

13 MR. SIMON: I don't see how it wouldn't.

14 THE COURT: Yeah, I know you don't.

15 MR. SIMON: It specifically --

16 THE COURT: I know where we are.

17 MR. SIMON: It specifically calls out public
18 financing --

19 THE COURT: Of course.

20 MR. SIMON: -- as a motivating factor for -- if you find
21 it is a contract, the relocation policies -- it calls out -- how
22 about Item 6?

23 THE COURT: I've read them. I've read them in detail.
24 I've read them a dozen times. I know exactly what you're talking
25 about. My interpretation of those so far is that the reason the

1 NFL wants people to look at those, wants franchises and members to
2 look at those, is to protect the interests of the NFL. That's the
3 reason they do it. They want to do it because with good public
4 relations, we have good business. That's why they want to do it.

5 If this is -- and -- that's sort of the theme of this case,
6 actually, is that they don't really care about the host cities.
7 That's your theme. They don't really care about the host cities.
8 They don't have loyalty to the host cities. They go anywhere they
9 want.

10 MR. SIMON: It may be a --

11 THE COURT: It's your theory.

12 MR. SIMON: -- reason. It's not the only reason and it
13 doesn't have to -- there can be multiple reasons and one reason --

14 THE COURT: There can be multiple reasons.

15 MR. SIMON: One reason is to protect the home cities,
16 and that is a principal reason of it. And you can't on one hand
17 say you're going to protect the home cities by putting into place
18 policies that alleviated an antitrust violation in the first place
19 and then turn around and say they don't mean anything. That's
20 totally duplicitous and that's the argument that they're making.
21 It can't be both. It has to either be they mean something or they
22 don't mean something and they shouldn't be heard. They should be
23 estopped from coming into this court and saying they don't mean
24 anything.

25 THE COURT: You were going somewhere in the first, and

1 then you went a little over the top. But I understand that. I
2 definitely understand the argument. I don't -- I'm pretty
3 strongly convinced you're wrong, but I might give you leave to
4 amend on that.

5 MR. SIMON: You've been strongly convinced I'm wrong in
6 the past.

7 THE COURT: And sometimes you turn me around and
8 sometimes you haven't.

9 MR. SIMON: Well, but given the factual nature, given
10 everything that I argued, Your Honor, I think amending in this
11 particular situation does not harm anything. It's going to -- I
12 mean, it's typical that we would get a right to amend. We may not
13 convince you on the amendment, but at least we ask for that shot.

14 THE COURT: No. I understand. Okay. I appreciate
15 that. Let me hear from the other side now.

16 UNIDENTIFIED SPEAKER: Your Honor, just briefly, --

17 THE COURT: No. Let me hear from the other side. We're
18 done.

19 MR. ASIMOW: Thank you, Your Honor. Daniel Asimow.

20 THE COURT: Yes.

21 MR. ASIMOW: I'll be pretty brief unless the Court has
22 questions. On the third party beneficiary claim, the Court has
23 the document, obviously. He's read it. That provides a basis to
24 rule on whether or not the City of Oakland --

25 THE COURT: Why is that the case?

1 MR. ASIMOW: -- is a third party beneficiary,

2 THE COURT: Why is that the case? What Mr. Simon says
3 is that it's not uncomplicated, that there are multiple
4 motivations, and that they appear -- there are glimpses of them on
5 the face of the document, but that they should be allowed to amend
6 to show that there are multiple motivations and that one of the
7 entities or -- that is designed -- this is designed to benefit is
8 the host cities, and the reason may be because that's good
9 business, but it's still designed to benefit the host city.

10 MR. ASIMOW: So what I would say about that, Your Honor,
11 is our disagreement is pretty clear about what its purpose and
12 motivation is because it says it over and over. The League's
13 interests doesn't leave a lot of mystery about that. And to the
14 extent the circumstances under which it was adopted come into play
15 here, that's the NFL trying to prevent litigation, trying to have
16 a defense, the antitrust litigation, if it gets sued. It's not --
17 cannot be that you adopt the policy in order to limit your
18 exposure to litigation -- only to open yourself up --

19 THE COURT: That happens all the time and you know that.
20 You know that's a --

21 MR. ASIMOW: And I --

22 THE COURT: -- be careful with what you wish for kind of
23 problem. But the point is that because the fact that you did
24 something like that in order to protect yourself from litigation,
25 which is a perfectly fine motivation, may mean that there were

1 multiple complex things that you agreed would be considered.
2 Among those would be the interests of the host cities.

3 MR. ASIMOW: Yeah. And then I'd like to add, Your
4 Honor, that --

5 THE COURT: Because I'm sure the NFL's not going to
6 stand here and say, We don't consider the interests of the host
7 cities when we decide whether there should be a move. You won't
8 say that; right?

9 MR. ASIMOW: Do you want me to go with the reality here
10 or we're stuck with the allegations in the complaint? The
11 reality, of course, the Raiders made an application. They
12 addressed all of these factors. The NFL and the owners considered
13 the factors. They weighed them in their business judgment. They
14 had a lot of problems with the Oakland Coliseum and with the
15 proposals in Oakland and the League and teams concluded that the
16 move made business sense.

17 But we're stuck with the allegations of the complaint. And
18 with this -- on the third party beneficiary claim -- and I think
19 the recent California Supreme Court case is really pretty helpful
20 here -- that's on a demurrer -- they didn't even have a contract.
21 You've got the contract here. The court there only had
22 allegations about the contract. They used practical judgment to
23 say, Come on, that's not what this contract is about. When an
24 employer and a payroll service agreed to have the payroll service,
25 you know, run the checks for the employees, they are not opening

1 themselves up to lawsuits by every employee when there is a
2 mistake. That's not what it's about and that's not what this is
3 about.

4 This is about the League providing some guidance to the teams
5 in the unfettered exercise of their business judgment when
6 considering a relocation. It's got a few other procedural steps
7 in there, but there's no allegation that any of those were not
8 complied with. There can't be such an allegation. So I'd urge
9 the Court to adhere to its tentative and not have us deal with
10 this claim again.

11 And then I would make one comment, if I could, on the
12 antitrust claim.

13 THE COURT: Sure.

14 MR. ASIMOW: Which is I was surprised to hear Counsel
15 disclaim any reliance on the 32-team issue. I mean, really a 32-
16 team limit -- it just happens to be 32 teams at the moment -- and
17 the NFL in its constitution, which the Court has that procedure,
18 is to consider an application for a new team. Teams have been
19 added over the years. We have not even a hint of an allegation
20 that some team tried to join the NFL so that they could play in
21 Oakland and was refused.

22 But putting that aside, Counsel seemed to disclaim any
23 reliance on the fact that the NFL operates at any given time wit
24 a set number of teams. The Court tried to steer Counsel back to
25 that theory, but based on their representations, I believe they

1 are arguing their way out of leave to amend on the antitrust claim
2 because I do not see how the vote to allow the Raiders to
3 relocate, which Counsel returned to over and over, can possibly be
4 an antitrust violation.

5 Had there been no vote and no Article 4.3 of the
6 constitution, the Raiders could have relocated and nobody would
7 say that's an antitrust claim.

8 What happened here is the NFL clubs did not restrain trade.
9 They did not prevent the Raiders from moving. One of the cases
10 that the Plaintiffs cited, the *Schachar* case, S-c-h-a-c-h-a-r,
11 from the Seventh Circuit says, "There can be no restraint of trade
12 without a restraint."

13 And what we have here is no restraint of trade. They did not
14 restrain trade. And so to equate this case with cases where a
15 league or other teams prevent a move I think is really off the
16 mark. Of course there's an antitrust concern when a group of
17 competitors stops a team from relocating or makes it expensive to
18 relocate. There have been many cases about that and those often
19 wind up being rule-reasoned cases.

20 This is the opposite. This is they didn't restrain trade.
21 They didn't prevent a team from moving, and that's just not an
22 antitrust theory.

23 THE COURT: Okay.

24 MR. ASIMOW: I know we're short on time. The other
25 things on calendar, we also have a case management conference and

1 the one thing I wanted to make sure we had the chance to discuss
2 with you and very much argue is discovery --

3 THE COURT: I know -- I know what I'm going to do on
4 that.

5 MR. ASIMOW: Okay.

6 THE COURT: I just want to make sure the NFL doesn't
7 want to be heard on the motion to fully proceed.

8 MR. HALL: Your Honor, may I just have one minute to try
9 to persuade you to stick with your original tentative ruling to
10 dismiss the common law claim as a matter of law?

11 THE COURT: Okay. On the clock.

12 MR. HALL: Nothing in an amended complaint can change
13 what's in the policy. Those are the words of the policy. The
14 Court's job to interpret that language. Your Honor has said
15 everything in that policy, all the wording, is about advancing the
16 League's interest. The League's interests --

17 THE COURT: What about -- what about the citation that
18 Mr. Simon gave us, which is -- there's other case that say the
19 same thing -- that the question of the motivation with respect --
20 not the motivation because it's a new case -- but the question
21 with respect to whether it's a third party beneficiary is factual.
22 I mean, it's not necessarily just on the face of a document.

23 MR. HALL: Well, it is a question of law to interpret
24 the contract. That very provision that Mr. Simon referred to also
25 refers to advancing the interests of the League. I believe the

1 Court had it right when it said, Of course it takes into account
2 the interests of the local community because that's one of the
3 things that goes into the decision about whether or not it makes
4 sense for the NFL in advancing the NFL's interests and its member
5 clubs in deciding whether or not to permit a relocation or to
6 block a relocation. And that's all that policy says.

7 It says -- it references the interests of the NFL, the
8 collective interests of the teams 15 times in this six-page
9 document. I just don't think there's any reasonable way to read
10 that to suggest that under the California Supreme Court's recent
11 decision, you know, the motivating purpose of this policy was to
12 benefit a local government like Oakland, or that the reasonable
13 expectation of the Commissioner promulgating this was to provide
14 an enforceable contract right to allow Oakland to sue the League
15 and its member clubs. It just can't be found in the agreement.

16 Last point.

17 THE COURT: Yeah.

18 MR. HALL: The facts about -- because there has been
19 some discussion about the facts that led to the adoption of this
20 policy, that being the *L.A. Coliseum* case, the Ninth Circuit
21 decision. Of course, what the Ninth Circuit said in that case,
22 which involved a restriction on team movement, is that the League
23 would be well-advised to put together a list, an objective list of
24 factors that would be considered by the League, and the language
25 -- the language of the Ninth Circuit in that case was "to serve

1 the needs inherent in producing the NFL product." Everything was
2 about recognizing that those were arguments advanced in that case
3 because we needed to do those things -- the League needed to do
4 those things to advance its own interests and the interests of the
5 club.

6 Nothing in the Ninth Circuit's decision said that the NFL
7 needed to protect the interests of local governments in order to
8 avoid antitrust liability. In fact, Your Honor, if you look at --
9 if you'll look at -- so the cite is 726 F.2d at 1397. The Ninth
10 Circuit says, "Local governments ought to be able to protect their
11 investment through the leases they negotiate with the teams for
12 the use of their stadium."

13 In other words, the Ninth Circuit is making it clear that to
14 avoid antitrust liability, you don't need to address the interests
15 of local communities. This is about just laying out objectively
16 the considerations that you and your member clubs would enter into
17 to advance your own interests.

18 So there's nothing -- there's nothing again in an amended
19 complaint that can change --

20 THE COURT: I get -- well, I don't know that that's
21 right because if I'm going to consider the circumstances under
22 which this was entered into, they could have plenty of factual
23 allegations that are made, but they don't, that say, And in doing
24 this, the NFL wanted to make sure that the community's investments
25 were protected. They could say that. I don't know whether

1 they'll say that. If they say that, then we'll have a fact issue;
2 right?

3 MR. HALL: Well, the current complaint says in paragraph
4 3 that the reason for the adoption of these guidelines was to
5 employ antitrust liability as a result of the *L.A. Coliseum* case.

6 THE COURT: I understand. But that's just a piece of --
7 that is the context in which it was done. Maybe there are others.
8 I don't know. I just don't know. I just don't -- it seems to me
9 we're going to have a motion to dismiss anyways. We're going to
10 have an amended complaint. I don't know whether or not it matters
11 very much if we go through this again. I don't know. I'm
12 skeptical on the subject, and we'll find out.

13 MR. HALL: Understand, Your Honor. Respect the Court's
14 ruling. Just wanted to have a chance to be heard.

15 THE COURT: Yes.

16 MR. HALL: Thank you, Your Honor.

17 THE COURT: Okay. I'm going to give you leave to amend.

18 MR. SIMON: Two quick things. The *Goodwardene* case,
19 which is the California Supreme Court case, specifically
20 acknowledges that you take into account the language of the
21 contract and all the relevant circumstances under which the
22 contract was entered into so that the Court can make a judgment,
23 a factual judgment, about those circumstances.

24 THE COURT: No, no. It doesn't say factual judgment.
25 It says judgment. This is a contract interpretation question;

1 right? Is this -- does this contract mean that this other entity
2 is the third party beneficiary. The normal rules of construction
3 would apply. And under some circumstances, you take into account
4 the relevant circumstances. Sometimes you do and sometimes you
5 don't. It depends what the contract says.

6 But isn't that -- isn't that --

7 MR. SIMON: Our argument is you have to in this
8 situation and we can allege other circumstances or more precisely
9 allege circumstances. I want to make --

10 THE COURT: I'm going to give you the opportunity. You
11 don't need to repeat this.

12 MR. SIMON: Can I make one other point because there
13 have been statements and there are statements in their briefs
14 which are incorrect about what we didn't allege. We do allege
15 breach of contract. There's a good faith obligation in the
16 relocation policies, and at paragraphs 7, 72, 77, and 145 we
17 allege breach of those good faith obligations in detail.

18 THE COURT: Okay.

19 MR. SIMON: And, secondly, they say there's no
20 allegations in the complaint -- they say -- this is the reply
21 brief -- that 13, 22 through 25, that the owners failed to
22 consider the relocation policies and we specifically alleged that
23 they ignored them at paragraph 6, that they disregarded them at
24 paragraph 15, that the deliberations were behind closed doors at
25 paragraph 28, that they were -- their decision was in direct

1 contravention of the policies at paragraph 72, and at paragraph
2 76, the Miami owner, who voted against (indiscernible) vote, even
3 though he pocketed his portion of the relocation fee, said, as
4 quoted in the complaint, "I just don't think everything was done
5 to try to stay in Oakland." And that is, in my opinion, the point
6 of this. Everything wasn't done. In fact, their very own
7 policies were disregarded.

8 THE COURT: The policies don't say that everything has
9 to be done. That's just -- that's just press coverage. That's
10 not legal argument. But, in any event, I'm giving you leave to
11 amend.

12 Now, the question for the table is what should we do about
13 discovery. And my inclination is stop discovery for the moment.
14 We've got it all teed up. You can continue your negotiations
15 about what will get produced and what won't get produced but not
16 have the things produced unless there's something specific that
17 you think ought to happen in the next 90 days while we get through
18 this.

19 MR. SIMON: I tend to agree with you, so I would also
20 like to ask that we have 45 days to amend as opposed to 30.

21 THE COURT: That's fine.

22 MR. SIMON: Okay.

23 THE COURT: Forty-five days to amend. I want you to
24 continue on the process of negotiating what's going to be produced
25 and how it's going to be produced, but no production will take

1 place before the hearing on the next motion to dismiss.

2 MR. SIMON: That's fine.

3 THE COURT: All right. Forty-five days and then you'll
4 get a motion and then we'll have some more fun.

5 Thank you, all.

6 ALL: Thank you, Your Honor.

7 (Proceedings adjourned at 10:32 p.m.)
8

9 I, Peggy Schuerger, certify that the foregoing is a
10 correct transcript from the official electronic sound recording
11 provided to me of the proceedings in the above-entitled matter.

12 
13 _____
14 Signature of Approved Transcriber

July 22, 2019

Date

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